U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 25 2004

IN RE: Petitioner: [redacted]

Beneficiary: [redacted]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director [redacted] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a missionary worker and literature evangelist. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the position qualified as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a January 6, 1950 letter from the IRS to the General Conference of [redacted] granting group tax exemption to the conference, its churches and other subordinate organizations. A January 31, 1992 letter from the IRS reaffirmed this exemption under sections 501(c)(3) and 170(b)(1)(A)(1) of the IRC. The record also contains an April 28, 1953 letter addressed to the petitioner in which the IRS states that the petitioner was included in the ruling issued to the General Conference of Seventh-day Adventists on January 6, 1950.

The director determined that the petitioner had not established its bona fides as a tax-exempt religious organization, as it did not establish that the tax-exempt status applied to the organization at its current address. However, we find that the evidence is sufficient to establish that the organization listed in the 1953 letter from the IRS and the petitioner are the same. We determine, based on the evidence presented, that the petitioner has established that it is a tax-exempt religious organization under section 501(c)(3) of the IRC.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

The petitioner states that the position of missionary worker/literature involves "outreach work in the community, making missionary visits to peoples [sic] homes and strengthening health and character education through personal counseling, prayer and Adventist reading materials."

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily

administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner submitted copies of excerpts from *Colporteur Ministry*, which it states was written by [redacted] a figure of authority in the Seventh-day Adventist Church. The sections submitted discuss the role of the canvasser in the church as a position equal to that of a minister. According to the literature, "[c]anvassing for our publications is an important and most profitable line of evangelistic work. Our publications can go to places where meetings cannot be held. In such places the faithful evangelistic canvasser takes the place of the living preacher."

The petitioner also submits copies of the publishing policies of the North American Division (NAD) Working Policy for 1998-1999, which distinguishes between the different levels of literature evangelists. These levels are described as beginner (a new recruit), licensed (one who has worked for 420 hours within a consecutive three month period and who demonstrates he or she can succeed as a salesman of the denominational literature), and credentialed (licensed for nine consecutive months with 44 reports evidencing a required amount of sales). The record also contains a flyer for a literature evangelists' convention in 1998.

The evidence is sufficient to establish that the position of literature evangelist is a religious occupation within the petitioner's denomination, defined and recognized by the Seventh-day Adventist Church.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on December 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a domestic missionary throughout the two-year period immediately preceding that date.

The petitioner states that the beneficiary has been a missionary/literature evangelist since 1976, working first for a church in the Dominican Republic and for the petitioner since his entry into the United States in October 1999. The petitioner states that the beneficiary is expected to continue earning "at least $350.00 each week plus month end bonuses."

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner submitted copies of the beneficiary's "Literary Evangelist Monthly Report" for what appears to be 2002, 2001 and March through December of 2000.[1] These documents purport to show, among other things, the number of hours a week the beneficiary worked, the number of presentations he made, the number of orders he received, and apparently the number of prayers and Bible studies he conducted. The report also seems to indicate the number of baptisms he either performed or in which he was involved.

The petitioner also submitted copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for 2000 and 2001. Copies of Form 1099-MISC issued by the petitioner to the beneficiary were submitted for the same time period. We note that in 2000, the petitioner paid the beneficiary approximately $11,224.00, or the equivalent of approximately 32 weeks pay at $350.00 per week. In 2001, the petitioner paid the beneficiary approximately $7,267.00, or approximately 20 weeks pay at $350.00 per week.

Further, although the petitioner stated that the beneficiary began his association with the petitioning organization in October 1999, it submitted no evidence of his employment in 1999. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). A letter from the beneficiary's prior employer in the Dominican Republic reflects that he worked there until 1998.

The record does not establish that the beneficiary worked continuously as a missionary/literature evangelist for two full years preceding the filing of the visa petition.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The director determined that, as the petitioner had not established that the proffered job was that of a religious worker, it had not established that it had extended a valid job offer to the beneficiary. As discussed above, the petitioner has sufficiently established that the proffered position is that of a religious worker within the meaning of the regulation.

The petitioner has not established, however, that it has offered a full time position to the beneficiary. The petitioner states that the proffered position, which the petitioner states has been occupied by the beneficiary since 1999, is that of a "regular literature evangelist." According to the petitioner, this term is used to designate a full time employee of the church.

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[1] The reports that appear to date from 2000 do not show a complete date. The petitioner's "Table of Contents," included with its response to the director's request for evidence (RFE) dated October 28, 2002, indicates it was including monthly time reports and records dating from 1998. However, the record contains no reports for 1998 or 1999.

The NAD Working Policy does not identify a class of "regular literature evangelists." Instead, it sets forth a list of requirements that an individual must meet in order to be considered an employee of the organization as opposed to an independent contractor or independent distributor. The petitioner has not recognized the beneficiary as an employee of the organization, as it has not issued previously issued the beneficiary a W-2, Wage and Tax Statement. The beneficiary has been issued a Form 1099-MISC, and reported this as income from self-employment on his Form 1040. Further, although the petitioner states that the beneficiary "will continue to earn at least $350.00 each week plus month end bonuses," as indicated above, the evidence does not indicate he has ever received that amount of compensation. The petitioner does not state a specific wage or salary for the proffered position. Although the petitioner states that the beneficiary is expected to earn at least $350.00 per week, it does not explain how the wage is computed. The evidence establishes that the petitioner's job offer is one for self-employment based on commissions earned by selling the petitioner's literature. Self-employment is not a valid job offer under the statute and regulation.

The director also determined that the petitioner had not established that it had the ability to pay the beneficiary a wage.

The regulation at 8 C.F.R. § 204.5(g)(2), which states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted a copy of a financial statement that was prepared by the auditing service of the petitioner. The document reports on the petitioner's financial status for the years ending 1997, 1998, and 1999. The regulation requires the petitioner to demonstrate its ability to pay the proffered wage from the date the petition is filed establishing the priority date. The petitioner provided no evidence of its ability to pay the proffered salary during 2001.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.